



U.S. House of Representatives Committee on the Judiciary F. James Sensenbrenner, Jr., Chairman

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News Advisory

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House Overwhelmingly Approves Bipartisan Legislation Protecting Private Property Rights

Bill Responds to Supreme Court's June Kelo Decision

WASHINGTON, D.C. – The House today by a 376-to-38 margin overwhelmingly approved bipartisan legislation protecting private property from eminent domain seizures by the government for private purposes. H.R. 4128, the “Private Property Rights Protection Act,” responds to the Supreme Court’s June ruling in *Kelo v. City of New London* and was introduced by House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.). The legislation now moves to the Senate, where similar legislation has been introduced. Chairman Sensenbrenner’s delivered the following statement during today’s House debate:

Mr. Chairman, I rise in strong support of H.R. 4128, the “Private Property Rights Protection Act,” overwhelmingly bipartisan legislation I introduced along with Agriculture Committee Chairman Goodlatte, and Judiciary Ranking Member Conyers.

On June 23, the Supreme Court, in a 5 to 4 decision in *Kelo v. City of New London*, transformed established constitutional principles when it held that the Fifth Amendment’s “public use” clause permitted a government to seize private property from one small homeowner and give it to a large corporation for a private business use. As the dissent in that case made clear, under the majority’s opinion, “*Any property may now be taken for the benefit of another private party . . . [T]he government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result.*”

Reaction to the *Kelo* decision has united strong opposition from across the

political, ideological, and socioeconomic spectrum. The NAACP and the AARP faulted *Kelo*'s failed reasoning by stating: "The takings that result [from the Court's decision] will disproportionately affect and harm the economically disadvantaged and, in particular, racial and ethnic minorities and the elderly." Representatives of religious organizations have also condemned the failed logic of the *Kelo* court, stating "Houses of worship and other religious institutions are, by their very nature, non-profit and almost universally tax-exempt. These fundamental characteristics of religious institutions render their property singularly vulnerable to being taken under the rationale approved by the [Supreme] court."

Public reaction to the *Kelo* decision has also been swift and strong. The protection of private property rights is the number one issue that concerns Americans today, according to a *Wall Street Journal*/NBC News poll, and by an 11-to-1 margin Americans say they oppose the taking of private property for private uses, even if it is for the public economic good.

According to an American Survey poll, "Public support for limiting the power of eminent domain is robust and cuts across demographic and partisan groups." Even Justice John Paul Stevens, who authored the Court's 5-4 decision, recently acknowledged that if he were a legislator he would oppose the results of his own ruling by working to change current law.

A week after the Supreme Court's now notorious *Kelo* decision, I introduced H.R. 3135, the "Private Property Rights Protection Act" to help restore Americans' property rights the Supreme Court took away. On October 25, I introduced the even stronger legislation we consider today, which has benefitted greatly from the contributions of Ranking Member Conyers, Ms. Waters, Mr. Goodlatte, and others, including Mr. Cannon and Mr. Flake.

H.R. 4128 helps restore the property rights of all Americans by establishing a penalty for states and localities that abuse their eminent domain power by denying states or localities that commit such abuse all federal economic development funds for a period of two years. Under this legislation, there is a clear connection between the federal funds that would be denied and the abuse Congress is intending to prevent – if states or localities abuse their eminent domain power by using "economic development" as a rationale for a taking, they shall not receive federal "economic development" funds that could contribute to similarly abusive land grabs.

I am very mindful of the long history of eminent domain abuses, particularly in low-income and often predominantly minority neighborhoods, and the need to stop it. I am also very mindful of the reasons we should allow the government to take land when the way in which the land is being used constitutes an immediate threat to the public

health and safety. I believe this bill accomplishes both goals.

The legislation includes an express private right of action to make certain that those suffering injuries from a violation of the bill will be allowed access to state or federal court to enforce its provisions, and includes a fee-shifting provision – identical to those in other civil rights laws – that permits the recovery of attorney and other litigation fees to prevailing property owners. The legislation gives States and localities the clear opportunity to cure any violation before they lose any Federal economic development funds by either returning or replacing the improperly taken property to the property owner.

H.R. 4128 also includes carefully crafted refinements of the definition of “economic development” that specifically allow the types of takings that, prior to the *Kelo* decision, had achieved a consensus as to their appropriateness. These include takings in which the public itself owns the property, where the property is used by a common carrier or public utility and for related infrastructure like pipelines, and where the property is abandoned.

Finally, in order to facilitate state compliance with its terms, H.R. 4128 will not become effective until the start of the first fiscal year following the enactment of the legislation, nor would it apply to any project for which condemnation proceedings had begun prior to enactment.

Mr. Chairman, I urge all my colleagues to join me in supporting this vital bipartisan legislation that will protect the property rights of the most vulnerable in our society and limit the effect of the now-notorious *Kelo* decision.

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